



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 21 1993

US EPA RECORDS CENTER REGION 5



REPLY TO THE ATTENTION OF:

HS-6J

GENERAL NOTICE LETTER
URGENT LEGAL MATTER
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brainard Industries
c/o CT Corporation System
815 Superior Avenue NE
Cleveland, OH 44114

RE: Powell Road Landfill, Huber Heights, Ohio
General Notice of Potential Liability

Dear Sir or Madam:

This letter notifies you of potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), that you may have incurred with respect to the above referenced Site. This letter also informs you of potential response activities at the Site, which you may be asked to perform or finance at a later date.

NOTICE OF POTENTIAL LIABILITY

The United States Environmental Protection Agency ("U.S. EPA") has documented the release or threat of release of hazardous substances, pollutants and contaminants into the environment from the above-referenced Site. U.S. EPA has spent, or is considering spending public funds to investigate and control these releases. This action will be taken by U.S. EPA pursuant to CERCLA, unless U.S. EPA determines that such action will be done properly by a responsible party or parties. Responsible parties under CERCLA include the current and former owners and operators of the facility, persons who generated the hazardous substances, and persons who were involved in the transport, treatment or disposal of the hazardous substances at the facility.

U.S. EPA has evaluated information in connection with the investigation of the Site. Based on this information, U.S. EPA believes that you may be a potentially responsible party (PRP) with respect to this Site.

Under Sections 107(a) and 106(a) of CERCLA, potentially liable parties may be ordered to perform response actions deemed necessary by U.S. EPA to protect the public health, welfare, or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to expenditures for conducting Remedial Investigation/Feasibility Study (RI/FS), conducting a Remedial Design and Remedial Action (RD/RA), and other investigation, planning, response, oversight and enforcement activities. In addition, responsible parties may be required to pay for damages for injury to, destruction of, or loss of natural resources, including the cost of assessing such damages.

In accordance with CERCLA, U.S. EPA and Waste Management of North America, Inc. have already undertaken certain actions and incurred certain costs in response to conditions at the Site. These response activities relate to the RI/FS at the Site.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

You may receive an additional notice from U.S. EPA in the future. That notice would either inform you that U.S. EPA is using the CERCLA Section 122(e) special notice procedures to formally negotiate the terms of a consent order or consent decree to conduct or finance Site response activities, or it would inform you that U.S. EPA is not using such procedures pursuant to Section 122(a). If U.S. EPA does not use Section 122(e) special notice procedures, the notice would specify why the special notice procedures were not appropriate in this case.

Under Section 122(e), U.S. EPA has the discretionary authority to use the special notice procedures if U.S. EPA determines that such procedures would facilitate an agreement between U.S. EPA and the PRPs and would expedite remedial action at the Site. Use of the special notice procedures triggers a moratorium on certain U.S. EPA activities at the Site. The purpose of this moratorium is to provide a period of time when PRPs and U.S. EPA may enter into formal negotiations for PRP conduct or financing of the response activities at the Site.

The initial moratorium for the RD/RA lasts for 60 days after the special notice. If U.S. EPA determines that an offer to perform or finance the activities is submitted by the PRPs within those 60 days, and that the offer is a good faith offer, a 60 day extension is provided for by statute for further negotiations.

If U.S. EPA determines that a good faith offer has not been submitted within the moratorium period, U.S. EPA may terminate negotiations under Section 122(e)(4) of CERCLA. EPA may then commence such cleanup or enforcement action as it deems appropriate. In the absence of an agreement between the parties to perform or finance the necessary cleanup activities, U.S. EPA may undertake these activities and pursue civil litigation against the parties for reimbursement of Site expenditures. Alternatively, U.S. EPA may issue an administrative order pursuant to Section 106(a) of CERCLA to require PRPs to commence cleanup activities, or may commence civil litigation pursuant to Section 106(a) of CERCLA to obtain similar relief. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day, under Section 106(b) of CERCLA, or in the imposition of treble damages under Section 107(c)(3).

SITE RESPONSE ACTIVITIES

At present, U.S. EPA is planning to conduct the following activities at the Site:

Remedial Design and Remedial Action (RD/RA) to design and implement the remedial action selected and approved by U.S. EPA for the Site.

INFORMATION TO ASSIST RESPONSIBLE PARTIES

U.S. EPA would like to encourage good faith negotiations between the PRPs and U.S. EPA, as well as among the PRPs. To assist PRPs in preparing a proposal and in negotiating with U.S. EPA concerning this matter, U.S. EPA is providing a list of the names of the PRPs to whom general notice of potential liability has been sent or is being sent. Inclusion on, or exclusion from, the list does not constitute a final determination by U.S. EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site.

U.S. EPA will also be holding a meeting at the date and time specified below to discuss general information about the Site, to discuss the reimbursement of U.S. EPA for costs incurred to date and to discuss the voluntary performance or financing of the response activities which U.S. EPA has determined or will determine are required at the facility:

DATE: June 9, 1993
TIME: 9:00 A.M.
LOCATION: Dayton Airport Inn
Dayton International Airport
Vandalia, OH

ATTENDING ON BEHALF OF THE UNITED STATES:

Catherine Garypie
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson CM-3T
Chicago, IL 60604

Patricia Cosgrove
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson CM-3T
Chicago, IL 60604

Jan Bartlett
Remedial Project Manager
Office of Superfund
U.S. Environmental Protection Agency
77 W. Jackson HSRM-6J
Chicago, IL 60604

PRP STEERING COMMITTEE

U.S. EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with U.S. EPA.

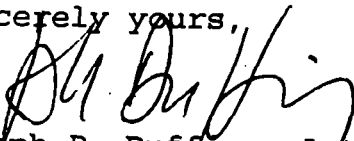
PRP RESPONSE AND EPA CONTACT

Due to the nature of the problem at this facility and the attendant legal ramifications, U.S. EPA strongly encourages you to attend the informational meeting scheduled for the date and time indicated above. U.S. EPA also strongly encourages the PRPs to meet amongst themselves immediately following the informational meeting to discuss PRP organizational and response activities.

If you have any questions pertaining to this letter, please direct your attorney to contact Catherine Garypie, Assistant

Regional Counsel, at 312/886-7936, or Patricia Cosgrove,
Assistant Regional Counsel, at 312/886-6722.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. P. Dufficy", written over the "Sincerely yours," text.

Joseph P. Dufficy, Acting Chief
MN/OH Remedial Response Branch
Office of Superfund

**LIST OF POTENTIALLY RESPONSIBLE PARTIES ISSUED THIS GENERAL
NOTICE LETTER FOR POWELL ROAD LANDFILL SITE:**

American Lubricants
Angel Manufacturing
Blaylock Trucking
Brainard Industries
Butler Township
Capital Cleaning Company
City of Dayton
City of Huber Heights
City of Springfield
City of Vandalia
Clark County
DAP
Dayton Overhead Door
Dayton Power & Light (DP & L)
Dayton Sash & Door
Dayton Tire Company
Fox's Cleaners
Frank's Radiator
Globe Industries
Greene County
GSX
Huffman Manufacturing
Janitorial Supplies
Laidlaw
Montgomery County
N & N Commercial Waste Disposal
NCR
Plibrico Company
Portland Cement Company
Sanitary Disposal Systems
Scholten Construction Co.
Sherwin Williams
Tru-Fab, Inc.
Turner DP & L
Van Dyne Crotty
Wright Patterson Air Force Base
Wright State University

**LIST OF POTENTIALLY RESPONSIBLE PARTIES PREVIOUSLY ISSUED GENERAL
NOTICE LETTER FOR POWELL ROAD LANDFILL SITE:**

**Frank Barger
Chrysler
General Motors
Montgomery County North Reduction Plant
Moran Paint Company
Protective Treatment, Inc.
Waste Management, Inc.**

C T CORPORATION SYSTEM



Associated with The Corporation Trust Company

815 SUPERIOR AVENUE, N.E., CLEVELAND, OHIO 44114 • (216) 621-4270

TO: JOSEPH P DUFFICY ACTING CHIEF
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO IL 60604

DATE: May 27, 1993
LOG NO. 147-60
VIA FEDERAL EXPRESS
6230889436

RE: ATTEMPTED SERVICE ON BRAINARD INDUSTRIES
Company Name

XXX Received by Certified ~~Registered~~ Mail on May 27, 1993

TITLE OF ACTION RE: POWELL ROAD LANDFILL, HUBER HEIGHTS, OHIO

COURT --- CASE NO. ---

TYPE OF DOCUMENTS --- Summons and/or Complaint

--- Garnishment XXX Other

ANSWER DATE: ---

Gentlemen:

We return original documents pertaining to the above company for the following reason:

--- C T Corporation System is not the Statutory Agent in the State of Ohio for this company and this information has been confirmed by the Secretary of State of Ohio.

--- C T Corporation System has formally resigned as Statutory Agent in the State of Ohio on ---.

XXX C T Corporation System has no record of this company name and has verified with the Secretary of State of Ohio that there is no such name listed on their records.

--- When C T Corporation System is the agent for service, it is essential that the documents show the corporation's exact corporate name as shown on the records of the Secretary of State of Ohio.

--- Defendant is not an employee of C T Corporation System. Please furnish correct name of corporate employer.

Yours very truly,

C T CORPORATION SYSTEM

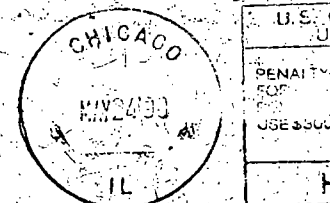
Debbie Justice /np
Service of Process

XX



United States
Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Official Business
Penalty for Private Use
\$300



DEBBIE K. JUSTICE
CT CORPORATION SYSTEM
815 SUPERIOR AVENUE, N.E.
CLEVELAND, OHIO 44114

MAY 27 1993

Brainard Industries
c/o CT Corporation System
815 Superior Avenue NE
Cleveland, OH 44114